# Senate Budget & Fiscal Review

***Senator Wesley Chesbro, Chair***

## Subcommittee No. 3
## on
## Health, Human Services, Labor, & Veterans Affairs

Senator Wesley Chesbro, Chair
Senator Gilbert Cedillo
Senator Tom McClintock
Senator Bruce McPherson
Senator Deborah Ortiz

**May 3rd , 2004**
**1:30 PM**
**Room 2040 (Note Room Change)**

(Diane Van Maren, Principal Consultant)

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| *Item* | *Description* |
|---|---|
| **Various** | **Vote Only Calendar For April 12th & 19th Hearings** *(Separate Hand Out)* |
| **4300** | **Department of Developmental Services--** ***Selected Items as Noted*** |
| **4260** | **Department of Health Services—*****Selected Items as Noted*** |

***PLEASE NOTE:*** **Only those items contained in this agenda will be discussed in the hearing. Issues will be discussed in the order as noted in the Agenda unless otherwise determined by the Chair.**

**Additional issues pertaining to the DHS will be reviewed at the Subcommittee's May 10th "OPEN" issues hearing, and again at the time of the Governor's May Revision. Issues pertaining to the DDS will be reviewed again at the time of the Governor's May Revision.** ***Please see the Senate File for dates and times of subsequent hearings.***

## I. Vote Only Calendar For April 12th & April 19th Hearings *(See Separate Hand Out)*

## II. Vote Only Calendar For Today's Hearing *(All Items Listed Below)*

### A. Item 4260 Department of Health Services

#### 1. Convert Limited-Term Positions to Permanent

***Background and Governor's Proposed Finance Letter:*** In the Budget Act of 2002, the DHS received 5.5 positions to implement the Child Health Disability Prevention (CHDP) Gateway. These limited-term positions expire as of June 30, 2004. The DHS is requesting to convert 2.5 of these positions to permanent status in order to address on-going workload associated with the CHDP Gateway, and maintaining federal compliance associated with the Early, Periodic, Screening, Diagnosis and Treatment (EPSDT) Program. Specifically, these positions include two Associate Governmental Program Analysts and half of a Staff Counsel position. **Without these positions, a significant amount of federal funds could be placed at risk.**

***Subcommittee Staff Comment and Recommendation:*** No issues have been raised by this proposal. The Subcommittee staff believes this proposal has merit.

***Budget Issue***: Does the **Subcommittee want to adopt the Finance Letter?**

#### 2. Adult Influenza Vaccine Purchase

***Background and Governor's Proposed Finance Letter:*** Influenza and pneumonia accounted for 8,167 deaths in California in 2001. Influenza vaccination can reduce both health-care costs and productivity losses associated with influenza illness in all age groups, especially in the older population.

**In California, the projected population to be vaccinated with public health vaccine is about 700,000 seniors and chronically-ill persons. The DHS states that the vaccine has proven to be cost-effective by preventing serious illness that can result in hospitalizations.** According to the DHS, vaccination can lead to reductions of 34 percent to 44 percent in physician visits, 32 percent to 45 percent in lost workdays, and 25 percent less use for antibiotics in influenza-associated illnesses. **The DHS distributes the vaccine to local health departments for administration in public clinics and other non-profit settings.**

**Presently, the annual base for the purchase of influenza vaccine is $3.9 million (General Fund). The cost of influenza vaccine has increased annually by about 24 percent a year.**

**The DHS states that the estimated cost for vaccine for the upcoming 2005 influenza season is $9.11 per dose, for a total cost of $6.4 million (General Fund) to purchase 700,000 doses. As such, the DHS contends that <u>an increase of $2.5 million (General Fund) is needed to increase the appropriation for this purpose to the $6.4 million.</u>**

***<u>Subcommittee Staff Comment and Recommendation:</u>*** No issues have been raised regarding this proposal. It is recommended to approve as proposed.

***<u>Budget Issue:</u>*** Does the Subcommittee want to adopt the Finance Letter to increase by $2.5 million (General Fund) the appropriation to purchase influenza vaccine?

## <u>3. Nuclear Planning Assessment Special Account</u>

***<u>Background and Governor's Proposed Finance Letter:</u>*** Under the Radiation Protection Act of 1988 (revised in 1993), the Office of Emergency Services (OES) is responsible for coordinating with state, local and federal agencies to prepare for and implement the State Nuclear Power Plant Emergency Response Plan. The DHS also participates in execution of this planning.

The enabling legislation proved that utilities operating the nuclear power plants pay a portion of the costs to implement the plan, and also specifies the amounts to be used by the OES and DHS for their administrative functions. **According to this existing statute—Section 8610.5 of the Government Code—the amounts available for disbursement for state and local costs as specified shall be adjusted fore each fiscal year by the percentage increase in the California Consumer Price Index (CA CPI) of the previous calendar year.**

The Finance Letter requests **an increase of $14,000 (Nuclear Planning Assessment Special Account) to reflect an increase of 2.3 percent for the 2003 calendar year CA CPI as required pursuant to Section 8610.5 of the Government Code.**

***<u>Subcommittee Staff Recommendation:</u>*** Subcommittee staff concurs with the need for this adjustment. No issues have been raised.

***<u>Budget Issue:</u>*** Does the Subcommittee want to adopt the Finance Letter?

## <u>4. Proposed Trailer Legislation to Repeal Various Items in State Statute (See Hand Out)</u>

***<u>Governor's Proposed Budget—Trailer Bill Legislation (See Hand Out):</u>*** Through proposed trailer bill legislation, **the budget proposes to repeal the following enacted legislation:**

- SB 322 (Ortiz), Statutes of 2003, Stem Cell Research
- SB 308 (Ducheny), Statutes of 2003, Targeted Case Management
- SB 617 (Speier), Statues of 2003, Tissue Banks
- AB 1676 (Dutra), Statutes of 2003, HIV Prenatal Testing
- AB 71 (Horton), Statutes of 2003, Tobacco Products

***Subcommittee Staff Comment and Recommendation:*** The purpose of trailer bill legislation is to enact those provisions of state statute that are necessary to implement the Budget Bill. The pieces of legislation that the Administration proposes to eliminate do not directly affect the budget—no cost savings are identified for the budget year. The enacted legislation went through the legislative process and in some cases, received bi-partisan support. If the Administration is now seeking repeal of these statutes, it is recommended for them to proceed with policy legislation to do so, not trailer bill language.

**It is therefore recommended to reject the Administration's proposed trailer bill language to repeal these statutes. As such, the existing statute will remain.**

**Budget Issue:** Does the Subcommittee **want to reject the Administration's proposal to repeal the a fore referenced legislation?**

## 5. County Medical Services Program—Trailer Bill Language *(See Hand Out)*

***Background and Governor's Proposed Budget:*** The County Medical Services Program (CMSP) provides medical and dental care to low-income "medically indigent" **adults who reside in small counties (total of 34 counties)** (populations of 300,000 or less, with a few exceptions) and are **not eligible for Medi-Cal**. The responsibility for providing these services was transferred from the state to the counties as of January 1, 1983.

The CMSP Governing Board is responsible for the administration of pooled funds from the participating counties to provide services to over 65,000 CMSP participants.

Revenues to support the CMSP come from several sources, including County Realignment Funds (i.e., sales tax, vehicle license fees, and growth account), Proposition 99 Funds (selected accounts), Member County Participation Fees, and the General Fund (on deferral for the past 4 years). **In 1993 as part of an overall agreement with the counties, the state capped its participation in the local assistance portion of the CMSP at $20.2 million General Fund. The last time the state actually provided the General Fund support was in 1999.**

**The Governor is proposing trailer bill language to defer payment of the $20.2 million in General Fund support for the 2004-05 fiscal year. This proposal is consistent with prior years when the state has chosen not to provide any General Fund support to the program.**

***Constituency Concerns:*** The CMSP Governing Board states that the CMSP was intended to be a partnership between the member counties and the state. An essential ingredient of that partnership was the $20.2 million annual General Fund contribution to the program. **The suspension of the $20.2 million each year has consequences for the CMSP's capacity to offer services to its clients. Among other things, they note the following adjustments which are intended to be made, or have already been made, by the Board:**

- Reinforcement of CMSP as a Secondary Payer for savings of $4 million annually. This proposed change will require denial of selected medications by CMSP unless the CMSP client provides evidence that the client has been determined ineligible for the following state programs and pharmaceutical manufacturer patient assistance programs: ADAP, Family PACT, pharmaceutical manufacturer patient assistance programs for the treatment of Hepatitis-C.

- Elimination of eligibility for individuals with incomes greater than 200 percent of poverty for savings of $10 million annually.
- Assessment of a $5 million county risk allocation. All CMSP counties will be assessed their proportional share of this amount based upon the existing policy adopted by the Board in 1996. (A similar assessment was paid in 2003-04 as well.)
- Reduction of some dental benefits for savings of $3.8 million annually. This proposed change will revise the scope of dental benefits to restrict services to a set of basic services that address episodic dental needs and dental emergencies.
- Elimination of follow-up care for emergency services only clients for savings of $1 million annually. This proposed change will limit coverage for certain inpatient and outpatient services that might be needed as follow-up care after the emergency has been resolved.

***Subcommittee Staff Comment and Recommendation:*** Subcommittee staff concurs with the Administration's language to defer General Fund support for 2004-05.

***Budget Issue:*** Does the Subcommittee **want to adopt the Administration's proposed trailer bill language to defer the $20.2 million in General Fund support for one more year?**

## 6. Electronic Death Registration (Special Fund)

***Background and Governor's Proposed Finance Letter:*** Chapter 857, Statutes of 2002 (AB 2550, Nation), mandates the DHS to, among other things, develop and maintain an Electronic Death Registration System. AB 2550 provided for increased revenues for this purpose (i.e., fees were raised from $7 to $13 in 2003). In January 2005, the fees will decline by $2, leaving the remaining $4 increase to fund the maintenance and operation of the registration system.

The Finance Letter is requesting legislative authority to appropriate **an increase of $338,000 (Health Statistic Fund) to support the maintenance and operations of the Electronic Death Registration System. As required by statute, the system is to be implemented by January 2005.** According to the DHS, this new system will provide timely death data, cross matching with birth certificates for anti-fraud purposes, allow online verification of decedents' social security number and allow online access to fact-of-death information within 24-hours of the occurrence of the death.

**The DHS states that the project will be completed through an interagency service agreement with the University of California at Davis (UCD).**

***Subcommittee Staff Comment:*** The Subcommittee staff recommends approval of the Finance Letter. No issues have been raised for this special funded project.

***Budget Issue:*** Does the **Subcommittee want to adopt the Finance Letter?**

## 7. California Nutritional Network—Increased Federal Funds

***Background:*** In the mid-1990's, the federal USDA started strengthening the nutrition education component of the Food Stamp Program. An updated definition of nutrition education was established as "any set of learning experiences designed to facilitate the voluntary adoption of eating and other nutrition-related behaviors conducive to health and well-being", and states were encouraged to use large-scale marketing approaches. Social marketing had emerged in a USDA analysis of the nutrition education field as holding the most promise for achieving healthy eating among large numbers of people.

The California Nutrition Network for Healthy, Active Families (Network) is a social marketing campaign within the DHS. The Network is funded primarily by federal funds awarded by the US Department of Agriculture (USDA) to the California Department of Social Services. Through an annual interagency agreement, the DSS reimburses the DHS for activities conducted for the Network as identified in the USDA approved plan.

The Network qualifies for federal financial participation each year by documenting and compiling the in-kind expenditures of non-federal funds for allowable nutrition education activities to lower income households being made by state and local agencies, submitting a state plan and budget through the DSS, and dispersing the federal funds according tot he USDA-approved plan. Half is returned through local assistance contracts to contributing agencies.

**The six key strategic result areas that the Network employs to secure large-scale behavior change among low-income California families are as follows:**

- Provide statewide leadership, build infrastructure, and mobilize resources for large-scale social marketing campaigns to promote healthy eating, physical activity, and food security to help prevent serious chronic diseases such as cancer, diabetes, heart disease, and obesity.
- Conduct necessary surveys, research, and evaluation.
- Conduct necessary media and retail promotions.
- Develop and empower lower-income communities.
- Stimulate and enable changes in policies, systems, and environments to make healthy eating and physical activity the easiest choices for lower-income California families.
- Conduct special programs for children.

The Network has grown from $2.8 million in federal fiscal year 1996-07 to a budget of $59.3 million in 2002-03 (about $53 million in local assistance and $6 million in state support).

***Governor's Proposed Finance Letter:*** The Finance Letter proposes to provide an increase of $39.7 million (Reimbursements from the DSS which are all federal funds) to reflect the receipt of increased resources. All of this increase is proposed for local assistance. The increase allows for more community projects, as well as larger-scale collaborations of local agencies for a much larger reach in the Network's target audience of low-income Californians.

***Subcommittee Staff Recommendation:*** It is recommended to adopt the Finance Letter as proposed. No issues have been raised.

***Budget Issue:*** Does the **Subcommittee want to adopt the Finance Letter as proposed?**

## 8. California Partnership for Long-Term Care *(See Hand Out)*

***Background and Governor's Proposed Finance Letter:*** The California Partnership for Long-Term Care (Partnership) is the state's only program that promotes the purchase of high quality long-term care insurance policies to help reduce the state's looming funding crisis as the long-term care cost burden on the General Fund escalates. Over 60,000 California consumers own Partnership policies. In order to be Partnership-certified, policies are carefully reviewed by Partnership staff to be certain they contain the consumer protections essential for policyholders who have limited ability to pay of-of-pocket for the long-term care costs not covered by the policy.

The Partnership has forced onto the California market more affordable policies of shorter duration that will pay the average cost in a nursing facility for one or two years. The one and two year policies are attractive to modes and middle-income elderly consumers who, in the absence of being able to afford a policy, will require Medi-Cal to pay for their long-term care. The program has clearly demonstrated its cost-effectiveness in the past by avoiding some Medi-Cal funded long-term care facility expenditures.

**The Finance Letter is proposing to (1) continue a total of $590,000 ($208,000 General Fund) for five positions, along with applicable contract funding, (2) eliminate the sunset date for the program (currently is January 1, 2005), and (3) add trailer bill language requiring Partnership certified insurance issuers to reimburse the state $20,000 annually to the Partnership for common educational and outreach activities aimed at the Partnership's designated target market.**

***Subcommittee Staff Recommendation:*** Subcommittee staff concurs with the Finance Letter and has raised no issues.

## 9. Vital Record Improvement Act (VRIP)

***Background and Governor's Proposed Budget:*** A number of laws were enacted during the 2001-02 Legislative Session to help deter identity theft crimes. **One of these bills--SB 247 (Speier), Statutes of 2002—requires that informational copies of vital records be printed from a single statewide database.** It also increased fees the public pays for receiving a document to offset the costs to implement and operate the system.

**The additional $2 fee was instituted in July 2003 and will extend through December 31, 2005. The funding will be used to implement a single statewide database of imaged birth and death records, electronically redact signatures from these certificates, and make the result electronically available in each county recorder's office and county registrar's office.** Beginning January 1, 2006, this fee will be reduced by $1 and will be used to provide ongoing maintenance and operations for these records systems.

**The Governor's proposed budget requests an increase of $1.6 million (Health Statistic Fund) for 6 two-year limited-term positions in order to complete the Feasibility Study**

**Report initiated in 2003 to perform initial tasks to lay the foundation for implementing SB 247, and to generate the Request for Proposal (RFP) to select a contractor to accomplish the project.**

***Subcommittee Staff Recommendation:*** Subcommittee staff concurs with the Finance Letter. No issues have been raised.

***Budget Issue:*** Does the **Subcommittee want to approve as proposed the Finance Letter?**

## 10. Expansion of Tissue Bank Licensure Program

***Background and Governor's Proposed Budget:*** California now licenses 300 tissue banks which supply reproductive tissue, human milk and bone marrow from living donors and ocular tissue, bone, veins, tendons and heart valves from decreased donors to recipients dependent on human tissue. The number of tissue banks has increased since inception in 1993. From 1995 through 2000 about 20-25 new tissue banks were added each year, growing to about 195 in 2000. The current growth has increased since 2000 to now about 45-50 per year totaling 300 in 2003.

Onsite inspections must be conducted assure that this tissue is safely collected, processed, stored and distributed to protect living donors and patients dependent on human tissue.

The Governor's proposed budget requests an increase of $93,000 (Tissue Bank Licensing Fund) to fund one position—Examiner I for Laboratory Field Work.

***Subcommittee Recommendation:*** Subcommittee staff concurs with the need for the position and has raised no issues.

***Budget Issue:*** Does the Subcommittee want to approve as proposed the Governor's budget?

## B. Item 4120 Emergency Medical Services Authority (EMSA)

### 1. Paramedic Investigations

***Background and Finance Letter Request:*** Existing law enables the EMSA to deny, suspend or revoke any Emergency Medical Technician Paramedic's (EMT-P) license, or may place any EMT-P license holder on probation for deficient medical skills, negligence, or other unprofessional conduct.

The EMSA states that their Enforcement Unit has experienced a substantial increase in cases resulting in a significant backlog of cases. The caseload has continued to grow steadily over the past ten years; however, staffing levels have not increased since 1997. Currently, the investigative staff is only able to investigate the most serious patient care cases.

**The EMSA is requesting to establish a Special Investigator position and fund it by redirecting $87,000 (EMS Personnel Fund) presently used for contracts and increasing by $17,000 (EMS Personnel Fund) for this purpose.**

***Subcommittee Staff Comment and Recommendation:*** Subcommittee staff concurs with the need for the position and has raised no issues regarding the proposal.

***Budget Issue:*** Does the Subcommittee **want to adopt the proposed Finance Letter?**

### 2. Legal Counsel

***Background and Finance Letter Request:*** For the past ten years, the EMSA has contracted with the State Attorney General's (AG's) Office for all of their legal requirements. These include interpretations of legislation, statutes, and regulations for a variety of EMSA programs, as well as the processing of licensure actions against paramedics, including administrative hearing representation and representing EMSA in Superior Court.

As the department's paramedic investigation caseload has continued to increase along with the many mandated programs requiring regulatory oversight and statutory interpretation, the need for legal advice and support has increased proportionally. Currently, the AG's Office charges by the hour for all services provided. Any paramedic or applicant facing any disciplinary action is entitled by law to an administrative hearing before an administrative law judge. **As such, the EMSA's Enforcement Unit has experienced steadily rising legal costs due to increasing caseload and increasing hourly rates for the AG's services to prepare cases and represent the EMSA at the hearings.**

**The EMSA is requesting to fund one new position—Staff Counsel—by redirecting funds currently used to purchase AG Office legal services. This adjustment would result in savings of $28,000 (Emergency Medical Services Personnel Fund) annually.**

***Subcommittee Staff Comment and Recommendation:*** Subcommittee staff concurs with the proposed Finance Letter since it will result in savings and still meet the needs of the EMSA.

***Budget Issue:*** Does the Subcommittee **want to adopt the proposed Finance Letter?**

## C. Item 4300 Department of Developmental Services

### 1. Proposed Organizational Change Related to Protective Services at the DCs *(See Hand Out)*

***Background and Governor's Proposed Budget:*** The budget proposes trailer bill language to amend Sections 4491 and 4493 of Welfare and Institutions Code regarding safety issues at the state Developmental Centers. Specifically, the proposed language (1) provides increased authority to the Director of the DDS to be responsible for preserving the peace, and related security items, at the Developmental Centers, and (2) clarifies the role of the hospital administrator and peace officers at the facilities.

***Subcommittee Staff Recommendation:*** Subcommittee staff has raised no issues regarding this language.

***Budget Issue:*** Does the Subcommittee **want to adopt the Administration's proposed trailer bill language?**

### 2. Proposed Trailer Bill Language Related to Special Education *(See Hand Out)*

***Background and Governor's Proposed Trailer Bill Language:*** The DDS is proposing trailer bill language to add new language to Section 4659 of Welfare and Institutions Code that would state the following:

> A Regional Center shall not purchase special education or related services described under Part 30 (commencing with Section 56000 of the Education Code).

**The Governor's proposed budget contains no cost savings related to this proposed language, nor has a comprehensive analysis been provided to the Subcommittee as to why the language is being proposed through the budget process.**

***Subcommittee Staff Recommendation:*** The **Administration's proposed trailer bill language has potentially wide ranging implications which need to be discussed through the policy committee process**. No comprehensive analysis has been provided by the Administration on its potential implications. Further, since no dollar adjustments are recognized for this language, it seems inappropriate to propose it as trailer bill legislation. **As such, it is recommended to reject this language.**

***Budget Issue:*** Does the **Subcommittee want to *reject* the Administration's proposed trailer bill language** as being a part of the budget deliberations?

## 3. Proposed Trailer Bill Language Related to Regional Center Administrative Reporting

***Background and Governor's Proposed Finance Letter:*** In an effort for both the Legislature and DDS to better ascertain and understand the expenditures of the 21 Regional Centers, the Legislature crafted trailer bill language for reporting purposes. In recent times this language has served two principal purposes. First, is one of accountability. Both the Legislature and DDS now have actual, detailed data regarding the expenditure of the more than $420 million (total funds) in funds for Regional Center Operations. Second, since the Regional Centers know they have to legally report this information, the language assists in serving as another mechanism to dissuade utilizing funds for other purposes than Operations.

It should be noted that the DDS was not regularly collecting any of this data prior to implementation of the legislation.

The DDS is proposing to modify Section 4639.5 of Welfare and Institutions Code as follows:

**Section 4639.5 of Welfare and Institutions Code**

(a) By December 1 of each year, each regional center shall provide a listing to the state department of developmental services a complete current salary schedule for all personnel classifications used by the regional center. The information shall be provided in a format prescribed by the department. The department shall provide this information to the public upon request.

(b) ~~By December 1 of each year~~ At the request of the Department of Developmental Services, each regional center shall report information ~~to the State Department of Developmental Services~~ on all prior fiscal year expenditures from the regional center operations budget for all administrative services, including managerial, consultant, accounting, personnel, labor relations, and legal services, whether procured under a written contract or otherwise. Expenditures for the maintenance, repair or purchase of equipment or property shall not be required to be reported for purposes of this subdivision. The report shall be prepared in a format prescribed by the department and shall include, at a minimum, for each recipient the amount of funds expended, the type of service, and purpose of the expenditure. The department shall provide this information to the public upon request.

The Administration's proposed language would make it permissive as to when the DDS may or may not collect the data from the Regional Centers, instead of the annual reporting requirement.

***Subcommittee Staff Recommendation:*** Subcommittee staff **recommends to reject the proposed trailer bill change.** If the requirement of providing the data on an annual basis is deleted, then both the Legislature and DDS will not have good, reliable data on over $420 million (total funds) in annual expenditures. Further, under the Administration's proposal there would be no fiscal changes in that the Regional Centers would still have to regularly collect the data in order to be prepared to provide it to the DDS, if the DDS requested it. Therefore, it is recommended to retain the existing statute as presently crafted.

***Budget Issue:*** Does the **Subcommittee want to reject the Administration's proposed trailer bill change?**

## 4. Family Cost Participation Assessment Program—Trailer Bill Language

***Governor's April Proposal for Family Cost Participation Assessment Program:*** The Administration provided a comprehensive report –"Family Cost Participation Assessment Program"—to the Legislature on April 9th in response to last year's trailer bill legislation. **In this report, the Administration recommends to implement an assessment program by January 1, 2005 for families with children aged 3 through 17 years who live in a family's home, receive services through a Regional Center and are not Medi-Cal eligible.** The assessment would only be applicable to three services—Respite, Day Care and Camp.

In developing the assessment program, **the DDS used the following guiding principles:**

- All families who are financially able to participate in the cost of services provided to their children should do so.
- Family cost participation shall be developed in such a manner that will not create an unacceptable financial burden, will maintain the integrity of the family, and encourage families to continue caring for their children in their own home.
- Family cost participation will not compromise the health and safety of consumes receiving services.
- The assessment of family cost participation will not affect the development of the consumer's Individualized Program Plan (IPP).
- Consideration will be given to the number of family members dependent on the income and the number of children who receive services through the RC, while either in the family's home or out-of-home, including developmental centers.
- The system must be simple and cost effective to administer.
- The amount of the family cost participation assessment will be less than the amount of the parental fee for 24-hour, out-of-home placement in order to encourage families to continue caring for their children in their own home.
- The system must not affect the DDS' eligibility for other funding sources (i.e., Home and Community-Based Medicaid Waiver, Early Start funding, and others).
- The system must react to changes in family economic conditions or unforeseen, unusual family hardships, and allow for the re-determination of the level of cost participation based on those changes.

**The Administration's proposed Family Cost Participation Assessment Program would be implemented as of January 1, 2005**

***Potential Fiscal Effects:*** The **DDS notes the following proposed fiscal implications:**

- **2004-05= No net savings.** It is assumed that $570,000 would be needed for Regional Center staff and that $570,000 (total funds) would be reduced from the Purchase of Services expenditures.
- **2005-06= $2.188 million** (total funds) in savings. It is assumed that $912,000 would be needed for Regional Center staff and that $3.1 million (total funds) in the Purchase of Services expenditures would be reduced.
- **2006-07= $2.7 million (total funds) in *net* savings on an annual, *on-going* basis.** It is assumed that $770,000 and 15 positions would be needed on an **on-going basis** and that $3.5 million in the Purchase of Services expenditures would be reduced.

***Prior Subcommittee Hearing—April 19th:*** The Subcommittee received significant public and written testimony regarding the Governor's proposal. This information was taken into advisement and used to modify the Administration's proposed trailer bill language.

***Subcommittee Staff Recommendation:*** Subcommittee staff recommends for the Subcommittee to adopt **(1)** the following modified trailer bill language, and **(2)** the Administration's fiscal assumptions. **The proposed modified trailer bill language is as follows:**

**§ 4783. Family Cost Participation Assessment Program**

(The DDS proposed adding new language—Section 4783-- to Welfare and Institutions Code. Proposed Subcommittee Staff changes are noted by underscores and deletions to the DDS proposed revised language (as of 4/30/04).)

**4783 (a)** The Family Cost Participation Program is hereby created in the Department of Developmental Services for the purpose of assessing a cost participation to parent(s), as defined in Title 17 of the California Code of Regulations, section 50215, whose children with developmental disabilities ages 3 through 17 years live in the parent(s) home, receive services and supports purchased through the regional center, and are not Medi-Cal eligible. Notwithstanding any other provision of law, the parent(s) shall participate in the Family Cost Participation Program subject to the provisions of this section.

(b) The Department shall develop and establish a Family Cost Participation Schedule (Schedule), which will be used by regional centers to assess the parent(s)' cost participation. The Schedule will consist of a sliding scale for parent(s) with an annual gross income not less than 400 percent of the Federal Poverty Guideline, and be adjusted for the level of annual gross income and the number of persons living in the family home. The Schedule established pursuant to this section shall be exempt from Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Family cost participation assessments will only be applied to respite, day care, and camping services included in the child's individual program plan.

(1) Families with two children who meet the criteria in subsection (c) will be assessed at 75 percent of the respite, day care, and camping services included in ~~the~~ each child's individual program plan for each child living at home.

(2) Families with three children who meet the criteria in subsection (c) will be assessed at 50 percent of the respite, day care, and camping services included in ~~the~~ each child's individual program plan for each child living at home.

(d) If there is more than one minor child living in the parent(s)' home and receiving services or supports paid for by the regional center, or living in a 24-hour out-of-home facility, including a developmental center, the assessed amount will be adjusted as follows:

(3) Families with four children who meet the criteria in subsection (c) will be assessed at 25 percent of the respite, day care and camping services included in ~~the~~ each child's individual program plan for each child living at home.

(4) Families with more than four children who meet the criteria ~~above~~ in subsection (c) shall be exempt from participation.

(e)For each child, the amount of cost participation shall be less than the amount of the parental fee the parent(s) would pay if ~~their~~ the child lived in a 24-hour, out-of-home facility.

(f) Each regional center shall be responsible for administering the Family Cost Participation Program effective January 1, 2005.

(1) Family cost participation assessments or reassessments shall be conducted as follows:

A. By December 31, 2005, the regional centers shall assess the cost participation for all parent(s) of current consumers who meet the criteria of this section. Regional centers will use the most recent individual program plan for this purpose.

B. Regional centers shall assess the cost participation for parent(s) of newly identified consumers at the time of their initial individual program plan.

C. Reassessments for cost participation shall be conducted as part of the individual program plan reviews pursuant to section 4646.2(b).

D. The parent(s) is responsible for notifying the regional center when a change in family income occurs that would result in a change to the assessed amount of cost participation.

~~(e)~~ (2) Parent(s) shall self-certify their gross annual income to the regional center by providing copies of W-2 Wage Earners Statement, payroll stubs, a copy of the prior year's State income tax return, or other documentation, and proof of all other income.

(3) Regional centers shall notify parent(s) of their assessed cost participation within ten working days of receipt of the parent(s) complete income documentation.

~~(f)~~ (4) Parent(s) who have not provided copies of income documentation pursuant to subparagraph (2), shall be assessed the maximum cost participation based on the highest income level adjusted for family size until such time as the appropriate income documentation is provided. Parent(s) who subsequently provide income documentation that results in a reduction in their cost participation shall be reimbursed for the actual cost difference incurred for services identified in the individual program plan for respite, day care and camping, for 90 calendar days preceding the reassessment. The actual cost difference is the difference between the maximum cost participation originally assessed and the reassessed amount using the parent(s)' complete income documentation, that is substantiated with receipts showing that the services have been purchased by the parent(s).

(5) The Executive Director of the regional center may grant a cost participation adjustment for parent(s) who incur an unavoidable and uninsured catastrophic loss with direct economic impact on the family **or, who substantiate with receipts, significant unreimbursed medical costs associated with care for a child who is a regional center consumer** . A re-determination of the cost participation adjustment shall be made at least annually.

(g) A provider of respite, day care or camping services may not charge a rate for the parent(s)' share of cost that is higher than the rate paid by the regional center for its share of cost.

(h) The Department shall develop, and regional centers shall use, all forms and documents necessary to administer this program. These materials shall be posted on the Department's web site. Regional centers shall provide appropriate materials to parent(s) at the initial individual program plan meeting and subsequent individual program plan review meetings. These materials shall include a description of the Family Cost Participation Program.

(i) The Department shall include an audit of the Family Cost Participation Program during its audit of the regional centers.

(j) The parent(s) may appeal an error in the amount of the parent(s) cost participation to the executive director of the regional center within 30 days of notification of the amount of the assessed cost participation. The parent(s) may appeal to the Director of the Department of Developmental Services or his or her designee any decision by the executive director made pursuant to this subsection or to subsection (f)(5) within 15 days of receipt of the written decision of the executive director**.** <u>**Parent(s) who dispute the decision of the executive director pursuant to subsection (f) (5) shall have a right to a fair hearing as described in Chapter 7, section 4700 et seq., and the regional center shall provide notice pursuant to Chapter 7, section 4700 et seq.**</u>

(k) The Department may adopt emergency regulations to implement this section. The adoption of such regulations is an emergency necessary for the immediate preservation of the public peace, health, safety, and general welfare for purposes of subsection (b) of section 11346.1 of the Government Code. A Certificate of Compliance for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this subsection.

(l) By April 1, 2005, and annually thereafter, the Department shall report to the appropriate Legislative policy and budget committees on the status of program implementation. As of April 1, 2006, this report shall include:

(1) The annual total Purchase of Services savings attributable to the Family Cost Participation Program per regional center.

(2) The annual costs to the Department and each regional center to administer the Family Cost Participation Program.

(3) The number of families assessed a cost participation per regional center.

(4) The number of cost participation adjustments granted per regional center under subsection (f)(5).

(5) The number of appeals filed ~~**to the regional center and to the Department**~~ pursuant to subsection (j), and the number granted, modified or denied.

(m) This section shall become inoperative on July 1, 2009, and , as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

***<u>Budget Issue:</u>*** Does the Subcommittee **want to adopt the Subcommittee staff recommendation** to **<u>(1)</u>** use the modified trailer bill language, and **<u>(2)</u>** approve the Administration's fiscal assumptions?

## C. Discussion Items

### Item 4260 Department of Health Services

### 1. Infant Botulism—Request for Staff, A Loan and Statutory Change *(See Hand Out)*

***Background:*** Infant botulism occurs when the botulism bacteria temporarily colonizes and produces toxin in the baby's intestine. It is the most common form of human botulism in the United States. About 100 cases occur in the U.S. each year, with about 30 percent of these occurring in California.

**BabyBIG** is the DHS-sponsored Orphan Drug that treats infant botulism by neutralizing botulinum toxin. It is the only antidote available in the world for this purpose. According to the DHS, the safety and effectiveness of BabyBIG was shown in the department's 5-year statewide clinical trial from 1992-1997.

In October 2003 the federal FDA issued a license to the DHS to manufacture and sell BabyBIG. The manufacturing process of the treatment takes about one year. Production of BabyBIG is done through several contractors, all of whom were specified in the FDA licensure agreement. **Prior to licensure, the DHS had been selling the drug to hospitals at a pre-license charge of $1,560.**

**The DHS can now charge the full fee for BabyBIG. Accordingly, the DHS states that as of July 1, 2004 they will be charging $45,300 per dose in order for the program to recover costs and become self-sustaining. This fee may be adjusted in future years once the funds that were borrowed to fund the research and development of the program are paid off, and the program is fully established. According to the DOF, the program presently has $2.9 million in outstanding General Fund loans.**

The DHS notes that parents do not pay the fee for BabyBIG. The fee for BabyBIG is paid by the hospital and then pass on to third-party insurers.

***Finance Letter Proposal:*** **The budget proposes to (1)** increase **by $3.8 million (Infant Botulism Treatment and Prevention Fund)** to support the production and distribution of BabyBIG, **(2)** transfer **$500,000 from the Health Statistics Special Fund** to this program to serve as a loan, **(3) provide four new state positions** to initiate the next vaccine production cycle, **(4) amend Section 123707 of Health and Safety Code** authorize the DHS to maintain the licensure for BabyBIG and to exempt the contracts enacted under this program from the competitive bid process and other requirements of the Public Contract Code.

In addition, in order to proceed with the proposed $500,000 loan from the Health Statistics Special Fund, the following **Budget Bill Language** is proposed by the Administration:

> 4260-011-099 (Health Statistics Special Fund)—For transfer by the Controller to the Infant Botulism Treatment and Prevention Fund….($500,000)
>
> The amount transferred by this item is a loan to the Infant botulism Treatment and Prevention Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. **Principal and interest shall be repaid in full *after* all General Fund loans to the Infant Botulism Program are repaid and no later than June 30, 2007.**

**As noted above in the background section of this agenda, BabyBIG presently has $2.9 million in General Fund loans.**

***Subcommittee Committee Request:*** The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please describe the budget proposal**, including the need for the new staff, trailer bill language and loan from the Health Statistic Fund.**
- **2. Please describe when the loans—to the General Fund and to the Health Statistic Fund-- are to be repaid.**

***Budget Issue:*** Does the Subcommittee **want to adopt or modify the proposed Finance Letter?**

## 2. Community Challenge Grants—Governor's Proposed Elimination

***Background:*** The Community Challenge Grant (CCG) Program, established via the Budget Act of 1996, provides funds to local organizations to mitigate teen pregnancy and non-marital births. The CCG Program is specifically designed to reduce unwed and teen pregnancies, and absentee fatherhood through community-driven strategies and interventions implemented via a working partnership between the state and local community based organizations, local businesses, and youth and their parents.

**According to the DHS, the CCG Program provides multi-faceted prevention and intervention strategies from a comprehensive array of locally determined activities and services. These include abstinence education, academic tutoring, career/job skills development, community mobilization, family life education, father's involvement, male responsibility, mentoring, parenting for teen parents, support/education for parents of teens, and youth development.**

The CCG Program has its second three-year funding cycle, along with one extension year (total of 7 years). For 2003-04, the current grant agreement was extended.

***Governor's Proposed Budget:*** **The Governor is proposing to eliminate the appropriation**—a total of $19.9 million (Temporary Assistance to Needy Families (TANF) High Performance Awards Funds)—for the CCG Program. Of this amount to be eliminated, $19 million is for local assistance and the remaining amount is for state operations.

The DHS and DOF contend that no other funding source is available except for state General Fund moneys, and due to the present fiscal situation, these funds are not recommended for appropriation.

***Subcommittee Staff Request and Questions:*** The Subcommittee has requested for the DHS to respond to the following questions:

- **1.** Please **briefly describe why funding is proposed to be eliminated.**
- **2. From a technical assistance perspective, are any other sources of funding available for program continuation?**

***Budget Issue:*** Does the **Subcommittee want to adopt the Governor's proposed elimination of the existing appropriation or keep open pending the receipt of the May Revision?**

## 3. Prostate Cancer—Current Year and Budget Year Discussion

***Background:*** The Prostate Cancer Treatment Program provides prostate cancer treatment to low-income men who are uninsured. To enroll in the program, a man must be a California resident, have an income at or below 200 percent of poverty, be uninsured and not eligible for Medi-Cal or Medicare. The program is not an entitlement and must operate within its level of appropriation.

***Clarification of Prior Years Funding:*** The Budget Act of 2001 appropriated $20 million (Tobacco Settlement Funds) for the program. Based on expenditures of $8.7 million, a remaining balance of $11.3 million was available for re-appropriation. Due to a mid-year reduction adjustment, the final, revised budget for 2002-03 provided an appropriation of $10 million. Total expenditures were $8.6 million which left $1.4 million available for re-appropriation for 2003-04.

***Budget Act of 2003 and Subsequent Revisions:*** The Budget Act of 2003 appropriated $5 million (General Fund) for the program. **The appropriation was made in Provision 9 of Item 4260-001-0001 and allows for encumbrance of these funds through June 30, 2005 and expenditure through December 31, 2006.**

However as recently noted by the DOF, the Governor's revised 2004 budget as updated in January 2004, contains a technical error regarding the level of funds actually available for re-appropriation from 2002-03 for expenditure. **In total, a re-appropriation amount of $12.7 million is available for 2003-04.**

**The Administration, using Budget Control Section 4.1, reduced the program by about $4.5 million (General Fund).** ***(This action is discussed further below.)***

**In addition, the Budget Act of 2003 also included a transfer of $6 million of overall Tobacco Settlement Funds to the General Fund. The Prostate Cancer Program was reduced by $1.7 million as part of this transfer.**

**The following chart summarizes the above outlined items which affect 2003-04 :**

| | |
|---|---|
| Budget Act of 2003 Appropriation | $5 million |
| Governor Schwarzenegger's Control Section 4.1 Reduction | ($4.5 million) |
| **Governor's Proposed Revised 2003-04 Appropriation** | **$545,000** |
| Revised Re-Appropriation from Prior Years | $12.7 million |
| Transfer for Tobacco Settlement Fund | ($1.7 million) |
| **Governor's Proposed Total Revised Funding** | **$11.5 million** |
| Anticipated Expenditures | $5 million |
| **Amount Likely Available for Re-appropriation for 2004-05** | **$6.5 million** |

The DHS notes that the $5 million in anticipated expenditures is based on actual expenditures through December 31, 2003. The DHS has a contract with UCLA for $4.6 million to provide clinical services, administration, case management, outreach and evaluation. The DHS utilizes the remaining amount for their administration.

**It should be noted that 188 men are currently under-going treatment in the program and 103 men are considered new enrollees for a total of 291 men being served in 2003-04.**

***Legislative Counsel Opinion and Budget Control Section 4.1 of the Budget Act of 2003:*** At the request of Senator Ortiz, Legislative Counsel conducted an analysis of Budget Control Section 4.1 (Control Section) and the application of it by the DOF specifically to the Prostate Cancer Program. **Through this analysis, Legislative Counsel notes the following key factual aspects:**

- The Control Section **limits the reductions** to a state operation appropriation, and a program, project or function designated in any line of any schedule set forth by that appropriation, **may not be reduced by this section by more than 15 percent** (See **Subdivision h of the Control Section**).
- Item 4260-001-0001 (DHS state support item) was reduced by about $15.5 million from an appropriation of $264.1 million. This equates to less than 15 percent overall. **However, the DOF specifically reduced the Prostate Cancer Program by about 89 percent (i.e., a reduction of $4.5 million from an appropriation of $5 million).**
- Budget Act Language**-- Provision 9 of Item 4260-001-0001--directs that $5 million of the amount appropriated in this Item shall be appropriated for the Prostate Cancer Program. As such, the Legislature authorized a definite sum of money for a specific purpose—the Prostate Cancer Program.**

In an extensive analysis, **Legislative Counsel concludes that, in their opinion, the Control Section <u>does not authorize</u> the Director of Finance to eliminate or reduce an appropriation made in the Budget Act for a program in an amount that exceeds 15 percent if the program is a designated program for which an appropriation has been made (such as the Prostate Cancer Program).**

**They state that the DOF's construction of the Control Section in this case is clearly erroneous because applying a 15 percent reduction to a schedule (meaning the entire Item 4260-001-0001) could result in the total elimination of an appropriation for a program for which the Legislature has made a specific designation, which is clearly not intended as noted in Subdivision h of the Control Section.**

***Governor's Proposed 2004-05 Budget:*** The budget proposes **(1)** an appropriation of $570,000 (General Fund), and **(2)** re-appropriation language to capture the estimated $6.5 million available from prior years (as referenced above). **Specifically the re-appropriation language is as follows:**

**4260-491 (Tobacco Settlement Fund)**

**(1)** Item 4260-001-3020, **Budget Act of 2001**. Notwithstanding any other provision of law, the balance as of June 30, 2004 for the Prostate Cancer

Treatment Program is re-appropriated and is available for expenditure through June 30, 2005.
**(2)** Item 4260-001-3020, **Budget Act of 2002**. Notwithstanding any other provision of law, the balance as of June 30, 2004 for the Prostate Cancer Treatment Program is re-appropriated and is available for expenditure through June 30, 2005.

***Subcommittee Request and Questions:*** The Subcommittee has requested for the DOF and DHS to respond to the following questions:

- **1. DHS, Please describe the budget proposal (for 2004-05), including the re-appropriation.**

***Budget Issue:*** Does the **Subcommittee want to adopt the re-appropriation language and proposed funding level for 2004-05 as proposed by the Governor?**

## 4. Implementation of SB 2065 (Kuehl), Statutes of 2002—*Oversight Issue*

***Background--Overall:*** The DHS is the state's lead authority in charge of regulating radioactive materials and the laws pertaining to certification in nuclear medicine technology, as well as all aspects of ionizing radiation use, including public exposure to radiation, the receipt and transfer and disposal of radioactive materials, **and all other pertinent aspects of radiation use.**

***LLRW Advisory Group and Chapter 891, Statutes of 2002 (SB 2065):*** SB 2065 grew out of the Advisory Group on Low-Level Radioactive Waste (Advisory Group), chaired by U.S. President Atkinson. **The Advisory Group recommended that California institute an annual survey of waste generators and receive notification of all LLRW shipments.** Although federal law provides for a nationwide reporting system, it does not provide a level of detail that includes the identification of generators, potential segregation of waste or utilization of on-site storage procedures. The Advisory Group noted that this level of data is needed to better protect the public health and to respond to the needs of the generators. **Without a current and thorough inventory of LLRW in California, decision-makers cannot develop informed waste management policies.**

**Among other things, this legislation directs the DHS to conduct an annual inventory of California's 2000-plus licensed low-level radioactive waste (LLRW) generators.** They must record how much and what kinds of LLRW are produced, as well as the transport, storage, treatment, disposal or other disposition of this waste. In addition, the legislation requires that a copy of the shipping manifest accompanying each waste shipment for disposal be forwarded immediately to the state. All other toxic waste industries are required to report annually on the production and disposition of their wastes.

***<u>Since DHS Has Not Yet Implemented SB 2065, California is Placed At Higher Risk:</u>*** The **DHS has not yet proceeded with implementation of the SB 2065 requirements. Currently no state agency has comprehensive real time information that would enable them to track shipments or storage of LLRW that could be used in a radiation dispersal devise or dirty bomb. Radioactive materials and waste are also very vulnerable to theft and sabotage during transport. The National Research Council of the National Academy of Sciences, who advises the federal government on scientific issues, notes the following:**

> "Low-Level waste may be a particularly attractive terrorist target: It is produced by many companies, universities, and hospitals, it is not always stored or shipped under tight security, and it is routinely shipped across the country. Although labeled "low-level", some of this waste has high levels of radioactivity and could potentially be used to make an effective terrorism device.

**The DHS states that though they have a total budget of $18.1 million (Radiation Control Fund) which supports 118 staff, they do not have sufficient resources to implement SB 2065.** They contend that all of these resources are needed for conducting (1) mammography certification and inspection activities, (2) enforcement and compliance activities related to radioactive material and radiation machine inspections, and (3) assist in a wide variety of other radiologic health functions (See Hand Out). **Further they state that the <u>entire</u> Radiation Control Fund will balance to zero (i.e., all revenues will be needed for existing expenditures) in 2004-05. Therefore they contend that no funds are available to implement SB 2065.**

**It should be noted that the DHS <u>(1)</u> *utilizes $6.1 million* (Radiation Control Fund) of the $18.1 million *for operating expenses, and <u>(2)</u> $2.9 million for "distributed" costs*. This figure includes the following breakdown of line items:**

| | |
|---|---|
| • General Expense | $1.1 million (6 percent of the total) |
| • Printing and Postage | $116,000 |
| • Travel In State | $737,000 |
| • Equipment | $360,000 |
| • Technical Scientific Items | $67,000 |
| • Travel Out of State | $142,000 |
| • External Contracts | $3.3 million |
| • Internal Contracts | $121,000 |
| • Distributed Facility Operations | $968,000 |
| • Distributed Data Processing | $577,000 |
| • Distributed Administration | $768,000 |
| • Distributed Program OH | $390,000 |

With SB 2065, California would be better prepared to respond as promptly as needed in an emergency dealing with radioactive waste which has been stolen, lost, or released in an attack or accident. **Implementation is needed for tracking shipments of waste, accountability throughout the system, source reduction, and projecting future waste streams.**

***Subcommittee Request and Questions:*** The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Has the DHS had any conversations with the California Office of Home Land Security regarding LLRW? If so, please explain.
- **2.** DHS, please provide a brief update as to what activities, if any, have been undertaken to implement SB 2065. Why hasn't more been accomplished?
- **3.** If resources were provided, what is the timeframe for implementation?
- **4.** Why can some of the resources identified above, particularly some of the funds for operating expenses be temporarily redirected for this effort?

***Budget Issue:*** Does the Subcommittee want to keep this oversight issue open, pending the receipt of the Governor's May Revision?

## 5. Establishment of a Perchlorate Level for California—*Oversight Issue*

***Background—Perchlorate in California:*** Perchlorate and its salts (such as ammonium perchlorate) are used in solid propellant for rockets, missiles, and fireworks. Perchlorate has a number of industrial uses as well, including usage in flares, matches, ordinance and explosives.

As presented in state and federal toxicity evaluations, perchlorate can interfere with iodide uptake by the thyroid gland. **This can result in decreased production of thyroid hormones, which are needed for prenatal and postnatal growth and development, as well as for normal body metabolism.**

According to the DHS in a 1997 analysis, there is widespread perchlorate contamination in California's drinking water. **Results of monitoring by public water systems show it to be in more than 350 drinking water sources, primarily in the counties of Los Angeles, San Bernardino, Riverside and Orange. Other counties with concerns but fewer contaminated wells include Sacramento, Santa Clara, Tulare, Ventura, San Diego, and Sonoma.**

**Currently, the DHS recommends that a source be removed from service when perchlorate concentrations are more than ten times the "action level" (i.e., 4 parts per billion is the action level). The action level is the measurement used until the Maximum Contaminant Level—MCL—is established.**

***Background—Administrative Responsibilities:*** **California uses a two step process** for establishing safe levels for drinking water. Generally, the first step in the process is for the **Office of Environmental Health Hazard Assessment (OEHHA) to publish a Public Health Goal (PHG) which focuses on protecting human health.** OEHHA evaluates the risk using current principles and methods by practitioners in the fields of epidemiology, risk assessment and toxicology to public health posed by the contaminant. Based on the results of the risk assessment, OEHHA establishes a PHG. **After the PHG is established by OEHHA then the DHS can establish the Maximum Containment Levels, as discussed below.**

**Under the California Safe Drinking Water Act, the DHS is charged with setting primary drinking water standards.** These standards must be as stringent as, or more stringent than, the corresponding federal standard for a given entity. **The DHS must set the primary drinking water standards (i.e., the Maximum Contaminant Levels—MCLs) at levels as close as possible to the corresponding PHG, to the extent technologically and economically feasible.**

**In order to determine feasibility, DHS evaluates the water treatment technologies that are available to reduce concentrations of the contaminant and the costs of using those technologies.** Technical feasibility may include factors such as laboratories' ability to detect or analyze entities. Cost factors may include cost of monitoring and cost of treatment.

After balancing the public considerations of allowing concentrations of the contaminant in public water supplies that are above the PHG against the cost of reducing the concentration, **the DHS sets the MCL that is the enforceable standard and represents the highest concentration of the contaminant that may be present in public water supplies.**

***Existing Statute—State Exceeds Timelines for Determining Perchlorate:*** SB 1822 (Sher), Statutes of 2002, established specific timelines for the issuance of California's PHG and MCL for perchlorate. **Specifically, as contained in Section 116293 of Health and Safety Code, OEHHA was required to establish the PHG for perchlorate by January 1, 2003 and the DHS was required to establish the MCL for it by January 1, 2004.**

**OEHHA finally established the perchlorate PHG at 6 parts per billion on March 12, 2004. As such, the DHS can now proceed with the MCL process since the PHG has been established. Until the MCL is established, the DHS will continue to use the 4 parts per billion as the action level.**

***What is Required to Establish the Maximum Contaminant Level?:*** Generally, the DHS has known that the PHG would be forthcoming for some time, particularly since the OEHHA had completed a draft proposed PHG of up to 6 parts per billion in March of 2002. As such, some tasks should have commenced since not all of the DHS' tasks are directly dependent on having a final PHG.

**Overall, the DHS needs to conduct a technical and economic feasibility study. In this process, the DHS:**

- Selects possible draft MCL concentrations for evaluation;
- Evaluates the occurrence data;
- Evaluates available analytical methods and estimates monitoring costs at various draft MCL concentrations;
- Estimates population exposures at various draft MCL concentrations of the chemical;
- Identifies best available technologies for treatment;
- Estimates treatment costs at the possible draft MCL concentrations;
- Reviews the costs and associated health benefits (health risk reductions) that result from treatment at the possible draft MCL concentrations; and
- Selects a MCL for proposal from the possible draft MCL concentrations considered above.

Once the DHS establishes their proposed MCL, which includes a statement of reason and a fiscal impact, the document goes to several agencies for review—DHS' Office of Regulations, DHS' Budget Office, the Department of Finance, and the Health and Human Services Agency. The Office of Administrative Law (OAL) must also review and publish (in the California Notice Register) the availability of the regulation for a 45-day comment period. If changes are made at this point, the document will be put out for another 15-day public comment period. The DHS must respond to each comment.

***Governor's Proposed Budget:*** The **Governor's proposed January budget is moot** with respect to the timeline for the DHS to establish a MCL and to proceed with the rulemaking process. **As such, at this conjuncture it is unknown when the DHS may be able to establish a MCL for perchlorate.**

***Subcommittee Request and Questions:*** The Subcommittee has requested the DHS to respond to the following questions:

- **1. At what level is perchlorate being detected in public water systems?**
- **2. DHS,** Please describe how the current "action level" process works. Specifically, what guidance has the DHS given to public water systems to address the current contamination?
- **3. When is the DHS' portion of the rule-making going to be completed?**
- **4. What discussions has the DHS had with the federal government to address perchlorate contamination?**
- **5. Are there any other key considerations regarding perchlorate that the Subcommittee should be aware of?**

***Budget Issue:*** Does the **Subcommittee want to propose any adjustments or keep this oversight issue open until May Revision?**

## 6. Sudden Infant Death Syndrome (SIDS) Mandate Repeal *(See Hand Out)*

***Background:*** Two local mandates regarding SIDS were suspended in the Budget Act of 2002 due to the fiscal crisis. These are described below.

**Chapter 268, Statutes of 1991—SIDS Contacts by Local Health Officers**—requires the State Controller to reimburse each local health officer for their mandated contact with the person who is caring for a victim of SIDS at the time of death to inform them of the nature and causes of SIDS and provide support, referral and follow services.

**Chapter 453, Statutes of 1974—SIDS Notices**—requires coroners to notify the local health officer within 24 hours of a presumed death by SIDS. The local health officer must immediately contact the parent of the decreased to provide support, referral, information, and follow up services.

The state historically budgeted funds to pay for mandate claims associated with SIDS. As in many state mandate claim situations, the amount budgeted did not always match the total amount of claims outstanding at the State Controller's Office, or received by them in a given year. **According to the DOF, based on the last time General Fund moneys were budgeted for the mandate was in *2002-03* and was as follows:**

- $1.970 million for SIDS Autopsies:
- $342,000 for Local Health Officer contact requirements:
- $119,000 for SIDS Training for Firefighters; and
- $37,000 for SIDS Notices.

***Governor's Proposed Budget—Trailer Bill Language (See Hand Out):*** The Governor's budget proposes to provide no funding for the SIDS mandates and to repeal **all of the statute** related to the mandates. **This proposed mandate repeal includes: (1) SIDS Contacts by Local Health Officers, and (2) SIDS Notices.**

***Subcommittee Staff Recommendation:*** Assembly Member Laird is the author of several bills regarding the potential suspension or elimination of various mandates, including some as identified in the Governor's proposed budget. **As such, it is recommended to adopt the fiscal assumptions as contained in the Governor's proposed budget (i.e., no General Fund support) and to refer the trailer bill language to the policy committee process being reviewed by Assembly Member Laird.**

***Subcommittee Request and Questions:*** The Subcommittee has requested the DHS to respond to the following questions:

- **1.** Please briefly describe the budget proposal and the intent of the Governor's proposed trailer bill language.

***Budget Issue:*** Does the Subcommittee **want to adopt the Subcommittee staff recommendation?**

## 7. Governor's Proposed Elimination of WARP *(See Hand Out*

***Background:*** Through the **Budget Act of 2001** and accompanying trailer bill legislation, an appropriation was provided to serve as a supplemental wage adjustment for long-term care facilities which have a collective bargaining agreement or contract to increase salaries, wages, or benefits for certain staff. Under this proposal, participating providers needed to provide proof of a binding written commitment and a method of enforcement of the commitment. **The program was intended to terminate when the DHS implemented a facility-specific reimbursement methodology for non-hospital based nursing facilities (i.e., freestanding facilities).**

**It should be noted that the Supplemental Wage Payment has *never* been allocated to the facilities.** The DHS did provide instructions to eligible facilities on October 3, 2003 (See Hand Out for cover letter). **However, these instructions were later abruptly rescinded because stakeholder groups notified the DHS of issues that required amendments to the instructions, and then shortly thereafter, Governor Schwarzenegger issued an Executive Order requiring state agencies to cease processing regulations. Further, the Governor proposed to eliminate this program as part of his Mid-Year Reduction proposals.**

**It should be noted that Section 14110.65 of Welfare and Institutions Code which implements this program is slated to become inoperative as of August 1, 2004.**

*Governor's Proposed Budget:* **The budget proposes to eliminate funding for this adjustment for savings of $92 million ($46 million General Fund).**

***Budget Issue:*** Does the **Subcommittee want to keep this issue *open*, pending receipt of the May Revision?**

**LAST PAGE OF AGENDA**